IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Income Tax Application No.10 of 2002

The Commissioner of Income Tax. ... Applicant
v/s.
Geoffery Manners & Co.Ltd. ... Respondent

Mr.Ashok Kotangale for applicant.
Mr.Nitesh Joshi i/by Rajesh Shah & Co. for respondent.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 13th December 2005

P.C. :

1. Heard Mr.Kotangale in support of this Application. Mr.Joshi appears for the respondent.

2. Following four questions of law are sought to be raised in this Application:-

" 1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that only half of the expenditure on free distribution of samples should be covered by section 37(3A) of the IT Act, 1961 without any evidence that information was obtained from the distribution of free samples "

2. Whether on the facts and in the

circumstances of the case the Tribunal was right in law in directing the assessing officer to delete the addition of Rs.44,650/- on account of the expenses incurred on travelling of the Managing Director's wife outside India ?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in directing the assessing officer to delete the addition of Rs.1,01,983/- being the amount credited to suspense a/c. on account of various items of arrears of wages and salaries payable to various employees but not claimed by them ?

4. Whether, on the facts and in the circumstances of the case the Tribunal was right in law in deleting the addition of Rs.35,77,955/- made under section 43B on account of non-payment of sales-tax ? "

3. As far as question No.1 with respect to expenditure on free distribution of samples is concerned, it has been decided in favour of the revenue by the Apex Court in **Eskayef (now known as**

Smith Kline Beecham Pharmaceuticals (India) Ltd.) reported in 245 ITR page 116. The Apex Court has held that the expenditure incurred by different pharmaceutical Companies on distribution of free samples is an expenditure in the nature of publicity and sale promotion and, therefore, there will be liability to the tax and Section 37(3A) of the Income Tax Act, 1961 will apply. Hence, with consent of the Counsel appearing for the assessee, we decide this question No.1 in favour of the department.

4. As far as question No.2 is concerned, it is regarding the travelling expenses by a wife of the Managing Director outside India. From para-12 of the order of the CIT (Appeals), it is seen that this benefit was given to the assessee in the previous years. The revenue has not challenged the determination on this aspect when an Appeal was carried by the respondent to the Income Tax Appellate Tribunal and that deduction is rightly granted by the Income Tax Appellate Tribunal.

5. Question No.3 is with respect to the wages to various employees being credited to suspence account. That issue has been decided in favour of

the assessee in the decision of the Supreme Court in **CIT vs. Sugauli Sugar Works (P) Ltd. reported in 236 ITR page 518**.

6. As far as question No.4, which is sought to be raised in this matter is concerned, that is also decided in favour of the assessee by a Division Bench of this Court in **Commissioner of Sales Tax vs. Empico Traders reported in 47 Sales Tax Cases page 426**.

7. In the circumstances, we entertain this Application on question No.1 and answer it in favour of the revenue by consent of both parties. As far as the other three questions are concerned, this Application does not deserve to be entertained on these three questions and it is accordingly disposed of.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)